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NORWEST CORPORATION

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December 15, 1997

Cynthia L. Johnson
Director, Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street, S.W.
Washington, D.C. 20227

Dear Ms. Johnson:

Norwest Corporation is an \$83.9 billion bank holding company that owns financial institutions in 16 states. This letter responds to the Department of the Treasury's (the "Treasury's") request for comment regarding a proposed new regulation, implementing §31001(x) of the Debt Collection Improvement Act of 1996, which requires Federal Agencies to convert all Federal payments (other than payments under the Internal Revenue Code) from checks to electronic funds transfer ("EFT"). Norwest welcomes the opportunity to comment on this new regulation.

Norwest is in general support of the proposed regulation. Norwest does, however, believe that certain modifications to the proposal would expand the range of services available to the recipients of Federal payments while reducing the potential burden of the proposed regulation on financial institutions. For these reasons, Norwest respectfully requests that the Treasury consider revisions in accordance with the comments set forth below.

1. **Norwest believes that the proposed definition of "authorized payment agent" is overly restrictive and may inhibit the development of innovative services to those persons who have traditionally avoided financial institutions.**

Treasury has proposed to limit the definition of "authorized payment agent" to those individuals or entities that are appointed or otherwise selected as a representative payee or fiduciary under certain specified federal regulations. This narrow definition of "authorized payment agent" may force many recipients of Federal payments to discontinue long-established relationships with their current service providers of choice.

While Norwest agrees that some involvement of financial institutions at this stage can provide important protection to payment recipients and Federal agencies, Norwest also believes that a more expansive definition of "authorized payment agent" need not obviate that important role. Furthermore, unlike Treasury, Norwest does not believe that broadening the definition of

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“authorized payment agent” to include other entities will necessarily expose recipients to an unacceptable level of credit risk associated with the failure of such entities.

Some recipients make the conscious decision to avoid the services of financial institutions. These recipients obviously perceive some value in using non-financial institutions that they do not find with financial institutions. The experiences that these alternative service providers have with respect to servicing the unbanked places these service providers in a unique position to identify and develop products and delivery mechanisms specifically designed to meet the needs of this market segment.

Although the proposed regulations do not prohibit financial institutions from utilizing such service providers, the account requirements set forth in proposed section 208.6 essentially require that financial institutions act as an intermediary between the recipients of Federal payments and non-financial institutions. Requiring financial institutions to intermediate between Federal payment recipients and non-financial institution service providers creates an artificial barrier between the consumer and the ultimate service provider. Norwest is concerned that this artificial barrier will inhibit the development of innovative services to those persons who have traditionally avoided financial institutions. To address this concern, Norwest recommends that the proposed regulations be amended by expanding the definition of “authorized payment agent” to include those service providers who have traditionally serviced the unbanked recipients of Federal payments.

As noted above, Norwest agrees that some involvement of financial institutions should be required. To ensure that financial institutions are adequately involved in the disbursement of Federal payments, Norwest recommends that the proposed regulation be amended as follows:

- (1) All authorized payment agents should be required to maintain a commingled account at a Federally insured financial institution for the receipt of Federal payments.
- (2) All Federal payments should be required to be maintained in the commingled account until they are disbursed to the recipient of those funds.
- (3) All authorized payment agents should be required ensure that the account and all associated records are structured so that
 - (a) the title on the account clearly shows that the authorized payment agents are holding the funds in a representative capacity; and
 - (b) the recipients’ interests are protected under Federal deposit insurance guidelines.

The credit risks associated with the failure of these entities can be eliminated by requiring all funds to be maintained in accounts at Federally insured financial institutions in accordance with the rules set forth above until they are disbursed to the intended recipient.

2. **The circumstances under which the requirement to receive Federal payments by electronic funds transfer will be waived should be expanded to include situations in which the financial institution through which the account described in proposed section 208.5 has closed the recipient’s account for cause.**

Although access to the account described in proposed section 208.5 is described as being provided by Treasury, Norwest believes that it is essential that the financial institution through which the account is being offered retain some right to close the accounts for cause. As Norwest noted in its comment to proposed 31 CFR Part 207, restricting a financial institution from terminating an account relationship for cause could impair the bank's ability to effectively provide services to its

other customers or place the personal safety of bank employees in jeopardy. Norwest believes that once a recipient's account has been closed for cause, Federal payments to that recipient by electronic funds transfer should be terminated or suspended for some specified period of time. It is for this reason that Norwest recommends that section 208.4 be amended by specifying the closure of the account provided under section 208.5 for cause as a basis for waiving the requirement for Federal payments to be made by EFT.

3. **The regulation should be amended to make it clear that consumers utilizing the account described in proposed section 208.5 are offered the same protection that other accounts offered by government agencies are provided.**

Proposed section 208.5 provides that the account it describes will provide individuals "with the same consumer protections as other accounts at the same financial institution". Although the accounts are maintained at a financial institution, they are provided to the individual by Treasury. As such, Norwest believes that these accounts should be treated the same as any other electronic funds transfer of government benefits under 12 CFR section 205.15. Norwest believes that there should be no confusion regarding the status of these accounts. Therefore, Norwest recommends that the regulation be amended to make it clear that the accounts described in proposed section 208.5 are subject to the provisions of 12 CFR section 205.15. Such a provision would be consistent with the statutory mandate that recipients be "given the same consumer protections with respect to the account as other account holders at the same financial institution". This mandate merely requires assurance that individuals be given the same consumer protections as those that are afforded in connection with *comparable* accounts at the same institution. In this instance, comparable accounts are accounts established directly by government agencies.

In the absence of the clear inclusion of these accounts within the scope of section 205.15, there is the risk that the scope of the financial institution's responsibility with respect to the recipient may be misunderstood. For example, unless the account is brought within section 205.15, there is a real doubt whether any access device that may be required will be considered an "accepted access device" for purposes of Regulation E. For this reason, Norwest requests that Treasury modify the regulation to expressly provide that accounts described in proposed section 208.5 are considered "accounts" as that term is defined by 12 CFR section 205.15.

4. **Proposed section 208.5 should be amended to make it clear that the costs charged by a financial institution in connection with the account it describes will be deemed to be reasonable if the fees are the same as the fees the financial institution charges to other consumers for comparable accounts.**

Regional and institutional variations will make it virtually impossible for Treasury to establish pricing structures that are appropriate for all financial institutions. Norwest believes that financial institutions should generally be permitted to set their own fees for services without government intervention. Norwest recommends that the regulations be modified to clarify that fees charged in connection with the account described in proposed section 208.5 will be deemed to be "reasonable" if the fee is the same as fees charged for comparable services provided to other account holders at the same institution.

5. **The regulation should be modified to make it clear that ATM surcharges imposed by institutions other than the bank of account are not regulated by the regulation.**

Treasury has requested comment regarding whether the terms of the account described by section 208.5 should address the charges imposed by automated teller machine owners other than the account provider. Norwest recognizes that there is currently a controversy regarding ATM surcharges. Norwest believes, however, that this regulation is not the proper forum for debating the issues related to that controversy.

ATM surcharges are not account fees, but rather access charges imposed by the owner or operator of the ATM for the privilege and convenience of using that ATM. As such, they are outside of the control of the financial institution that maintains the account. Furthermore, Norwest does not believe that the current state of ATM technology will permit ATM operators to discriminate between accounts maintained pursuant to section 208.5 and other accounts maintained at the same institution. Finally, so long as a surcharge is clearly and conspicuously disclosed before the consumer becomes obligated to complete a transaction, Norwest does not believe that any consumer is unduly burdened by an ATM surcharge. For these reasons, Norwest recommends that the terms of the account described in proposed section 208.5 should not address the charges imposed by ATM owners other than the account provider.

In closing, we wish to restate that Norwest welcomes this opportunity to comment on the proposed new regulation. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth J. Bonneville", written over a horizontal line.

Kenneth J. Bonneville
Senior Counsel